

Both issues raised by Olsten Staffing Services give the Appeals Board the right to review the Preliminary Hearing Order. See K.S.A 44-534a(a)(2).

The Administrative Law Judge found claimant had sustained a compensable injury by accident and ordered medical benefits and temporary total disability benefits provided. During the benefit review process, the benefit review officer ordered that the respondent, CPI Corporation and its insurance carrier, Fireman's Fund Insurance Company, and respondent Olsten Staffing Services and its insurance carrier, Insurance Company of North America, were equally liable for the compensation benefits ordered in this case.

The claimant started working at CPI Corporation (CPI) as an employee for Olsten Staffing Services (Olsten), a temporary employment service, on April 12, 1994. Claimant was injured on April 21, 1994 when she slipped on some wet flour and fell as she descended from the stairway leaving CPI, after completing her work shift. During this preliminary hearing proceeding, the parties stipulated that the area where the claimant fell was the property of CPI. Claimant notified her supervisor, who was employed by CPI, the next day of her accident. On May 17, 1994, claimant was hired as a full time employee for CPI. She continued to work and did not request medical treatment until July 27, 1994. Medical treatment was then furnished by CPI until its insurance carrier learned that the claimant was employed by Olsten at the time of her accident and terminated the medical treatment.

After claimant's accident, she testified that her work activities at CPI caused increased pain in her arms, shoulders, back, neck and tingling in her hands. As she continued to work, she started also having pain in her legs and headaches. She testified that her work activities of using a high-pressure hose, sweeping and using an air hose made her symptoms worsen. As a result of these increased symptoms, claimant testified she notified her supervisor of her problems. Her treating physician, Mary A. Lynch, M.D., took her off work in September of 1994 and returned her to light work on October 7, 1994. Claimant returned to light work in CPI's laboratory testing salt. However, on the date of the regular hearing, February 13, 1995, claimant's last day worked for CPI had been January 31, 1995 because her work activities continued to cause her increased pain.

Olsten argues that claimant's accidental injury did not arise out of and in the course of her employment. Olsten admits that claimant was injured on property owned by CPI. However, Olsten contends claimant's accidental injury is not work-related because claimant had left work and even though the premises where the accident occurred is the property of CPI, CPI did not have exclusive control of such premises. Therefore, claimant's accidental injury is not compensable as she had left her employment and the proximate cause of her injury was not the employer's negligence. See K.S.A. 44-508(f).

Olsten further contends that if claimant's accidental injury is work related, then claimant failed to provide notice of the accident to Olsten as required by K.S.A. 44-520. Olsten argues that the earliest date contained in the record that it received notice from claimant concerning this accident was August 8, 1994. Olsten points out that even if one would accept claimant's argument that she sustained repetitive, accidental injuries up through her last day worked for Olsten, May 16, 1994, this is a period of eighty-four (84) days before Olsten was given notice of the alleged accident. This eighty-four (84) day period is outside the required ten (10) days and also exceeds the seventy-five (75) day period in which the claimant can show just cause. See K.S.A. 44-520.

On the other hand, claimant argues that accidental injury did arise out of and in the course of employment and timely notice was given as the claimant was an employee of both Olsten and CPI. Therefore, claimant may look to both employers for compensation

benefits. Claimant asserts that her injury is work related as the accident occurred on the premises owned and controlled by CPI. See K.S.A. 44-508(f). Claimant also argues that since she was employed in a dual-employment situation that each employer is the authorized agent of the other for purposes of notice of accident.

Claimant also raises the issue of whether the claimant was a statutory employee as contained in the provisions of K.S.A. 44-503. This statute generally provides that when any person performs work that is part of a principal's trade or business which the principal has contracted to perform, the principal shall be liable to provide workers compensation benefits to such worker as if that worker had been immediately employed by the principal. The Appeals Board finds that the preliminary hearing evidentiary record in this case establishes that the claimant was employed by Olsten but was performing work for CPI which was part of CPI's business, thus claimant was a statutory employee of CPI at the time of her accident on April 21, 1994. Since CPI and claimant had a statutory employer/employee relationship, then CPI is liable, pursuant to K.S.A. 44-503, for all workers compensation benefits ordered as a result of claimant's accidental injury.

The Appeals Board also finds that in regard to notice, the evidentiary record establishes that the claimant gave notice to her supervisor, who was employed by CPI, on the day after the accident which satisfies the notice requirements of K.S.A. 44-520.

Having found that CPI and claimant had a statutory employer/employee relationship on the date of claimant's accident, the Appeals Board finds that the Benefit Review Officer's Order dated December 28, 1994 that apportioned liability between Olsten and CPI shall be, and is set aside, as null and void.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated March 7, 1995, is hereby modified to the extent that CPI Corporation and its insurance carrier, Fireman's Fund Company, is liable for the payment of the preliminary benefits set forth in the Administrative Law Judge's Order and the Benefit Review Officer's Order of December 28, 1994 is set aside as null and void.

IT IS SO ORDERED.

Dated this ____ day of September, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James P. Johnston, Wichita, Kansas
Vincent A. Burnett, Wichita, Kansas

Richard A. Boeckman, Great Bend, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director